

**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF ALABAMA**

In re

Case No.03-32442-DHW  
Chapter 13

HENRY T. WILLIS and  
JANICE T. WILLIS,  
Debtors.

**MEMORANDUM OPINION**

The facts here are undisputed. On August 11, 2003 Henry T. and Janice T. Willis filed their joint petition for relief under chapter 13 of title 11. The debtors used part of the allowed homestead exemption to exempt anticipated proceeds from a class action suit against the State of Alabama.<sup>1</sup> The class action suit seeks recovery for damages resulting from the State's alleged discharge of pollutants causing a contaminated plume to form in the soil underneath the debtors' home. It is uncontested that the contamination first began prior to the debtors' ownership interest in the realty, but that the contaminated plume continued to expand after the debtor acquired an interest in the home.

On October 7, 2003 the chapter 13 trustee filed a timely objection to the debtors' use of the homestead exemption to exempt the expected class action recovery. The trustee contends that the homestead exemption is reserved exclusively for the debtors' home and not for personal property like the debtors' interest in the class action suit.

Following a hearing on November 3, 2003, the trustee and the debtors' attorney filed briefs on the objection. Upon consideration of the briefs and of the legal authority, the court concludes that the trustee's objection is due to be overruled.

In *In re Bradley*, 212 B.R. 998 (Bankr. M.D.Al. 1997) this court addressed the legal issue presented here on very similar facts to the case *sub judice*. In *Bradley* the debtors used their homestead exemption to claim as

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<sup>1</sup>The debtors claim \$5,000 of their anticipated class action recovery as exempt under *Alabama Code* §6-10-2 (1975) which entitles debtors to a \$5,000 homestead exemption. See Schedule C.

exempt the proceeds of their suit against the seller of their home for fraudulent concealment of termite infestation. As here, the trustee objected to the use of the homestead exemption to claim personalty as exempt.

The court in *Bradley* discussed the holding in *Ellis v. Pratt City*, 111 Ala. 629, 20 So. 649 (1896) where the Alabama Supreme Court held that proceeds from an insurance policy, in the case of loss, ‘shall . . . stand in the place of the property destroyed’ and that the statutory exemption extends to those insurance proceeds. *Id.* at 650. Nevertheless, the court concluded that *Ellis* was inapplicable to the facts in *Bradley*. *Id.* at 999. The court reasoned that the fraudulent representation concerning termite infestation occurred prior to the debtors’ ownership of their home, and that because the cause of action accrued prior to their ownership, the loss could not affect the debtors’ interest in the value of the home. Put another way, this court in *Bradley* concluded that a debtor must own the homestead at the time the loss occurs in order for the homestead exemption to extend to the proceeds compensating for such loss.

Counsel for the debtors originally argued in open court that the *Bradley* precedent should be reversed. However, in brief the debtors contend that this matter should be decided in their favor even under the existing *Bradley* precedent. The court agrees.

Because the contamination of the debtors’ home is ever expanding with the expansion of the contaminated plume, at least some of the damage occurred subsequent to their acquiring an interest in the property. While allocation of the amount of damage occurring pre and post ownership is virtually impossible, it is uncontested that at least some of the loss occurred after the debtors acquired their interest in the property. Hence, this case can be decided without disturbing the *Bradley* holding. In short, the loss to the value of the home occurred in part after the debtors had an interest in the home, and hence, the homestead exemption extends to the proceeds which compensates for such loss.

Finally, it is well settled that exemption statutes are to be construed liberally with narrowly construed exceptions. *Kennedy v. First Nat. Bank of Tuscaloosa*, 18 So. 396, 403 (Ala. 1895). Here, the debtor has claimed \$5,000 of the potential class action recovery as exempt under the *Ala. Code* §6-10-2. Absent evidence that this loss occurred entirely prior to the debtors’ acquisition of an interest in the home or that the loss, although post ownership, was less

than \$5,000, the trustee's objection cannot be sustained in light of the well established rule of liberal construction of homestead exemption claims.

A separate order will enter consonant with this memorandum.

Done this 2 day of December, 2003.

/s/ Dwight H. Williams, Jr.  
United States Bankruptcy Judge

c: Debtors  
Earl Gillian, Jr., Attorney for Debtors  
Curtis C. Reding, Trustee